Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 8 | October 2, 1974 | No. 40

This issue contains

T.D. 74-238 through 74-244

A.R.D. 321

Protest abstracts P74/649 through P74/655

Tariff Commission Notice

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 65 cents (single copy). Subscription price: $33.20 a year; $8.30 additional for foreign mailing.

U.S. Customs Service

(T.D. 74-238)

Bonds

Approval of consolidated aircraft bonds (air carrier blanket bonds) Customs Form 7605

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 11, 1974.

The following consolidated aircraft bonds have been approved as shown below:

Name of principal and surety	Date term commences	Date of approval	Filed with area director of customs; amount
Aeronaves De Mexico, S.A., 500 Fifth Ave., New York, N.Y.: Boston Old Colony Ins. Co.	May 7, 1974	June 26, 1974	J. F. K. Airport; $100,000
Aerovias Nacionales de Colombia S.A. (Avianca), 16 East 48th St., New York, N.Y.: Aetna Ins. Co.	July 1, 1974	June 14, 1974	J. F. K. Airport; $100,000

The foregoing principals have not been designated as carriers of bonded merchandise.

(BON-3-01)

LEONARD LEHMAN,
Assistant Commissioner
Regulations and Rulings.

(T.D. 74-239)

Bonds

Approval of consolidated aircraft bond (air carrier blanket bond) Customs Form 7605

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 11, 1974.

The following consolidated aircraft bond has been approved as shown below:

Name of principal and surety	Date term commences	Date of approval	Filed with area director of customs; amount
Qantas Airways Ltd., 350 Post St., San Francisco, Calif.; Peerless Ins. Co.	Feb. 1, 1974	June 30, 1974	San Francisco, Calif.; $100,000

The foregoing principal has been designated as a carrier of bonded merchandise.

(BON-3-01)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 74-240)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 9, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 74-191 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs pur-

poses to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Japan yen:	
August 26, 1974	$0.003302
August 27, 1974	.003310
August 28, 1974	.003306
August 29, 1974	.003301
August 30, 1974	.003301

(LIQ-3-O:D:T)

R. N. MARRA,
Director,
Duty Assessment Division.

[Published in the Federal Register September 18, 1974 (39 FR 33576)]

(T.D. 74-241)

Vessel repairs—Government vessels

Duty on repairs to vessels owned or bareboat chartered by the United States

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 13, 1974.

Sections 1 and 2 of Public Law 93-368, approved August 7, 1974, an Act "To exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971, and for other purposes," is set forth below.

Appropriate instructions will be issued in the near future.

(VES-13-18)

LEONARD LEHMAN,
Assistant Commissioner
Regulations and Rulings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 3114 and 3115 of the Revised Statutes of United States (19 U.S.C. 257 and 258) shall not apply to entries made in connetcion with arrivals before January 5, 1971, of vessels owned by the United States, or

bareboat chartered to the United States, and operated by or for the account of any department or agency of the United States.

SEC. 2. On or after the date of the enactment of this Act, no department or agency of the United States shall be entitled to a refund of any duties paid before January 5, 1971, by any department or agency of the United States under section 3114 of the Revised Statutes of the United States.

* * * * * * *

Approved August 7, 1974.

(T.D. 74-242)

Articles exported for exhibition, etc.—Certificates of exportation

Sections 10.66(a)(1) and 10.67(a)(1), Customs Regulations, relating to certificates of exportation, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Customs Form 4467, formerly used as a certificate of exportation, has been abolished and Customs Form 3311, entitled Declaration for Free Entry of Returned American Products and/or Certificate of Exportation, has been revised for use in its place. Consequently, sections 10.66(a)(1) and 10.67(a)(1) of the Customs Regulations (19 CFR 10.66(a)(1), 10.67(a)(1)) which require the filing of a certificate of exportation on Customs Form 4467, must be amended to provide for the present use of Customs Form 3311.

Accordingly, sections 10.66(a)(1) and 10.67(a)(1) of the Customs Regulations (19 CFR 10.66(a)(1), 10.67(a)(1)) are amended to read as follows:

§ 10.66 Articles exported for temporary exhibition and returned; procedure on entry.

(a) * * *

(1) A certificate of exploration on Customs Form 3311;

* * * * * * *

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) * * *

(1) A certificate of exportation on Customs Form 3311;

* * * * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

Because this amendment merely conforms the Customs Regulations with certain administrative changes, notice and public procedure

(T.D. 73-[illegible])

[illegible]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Customs Form 4467, formerly used as a certificate of exportation, has been abolished and Customs Form 3311, entitled Declaration for Free Entry of Returned American Products and/or Certificate of Exportation, has been revised for use in its place. Consequently, sections 10.66(a)(1) and 10.67(a)(1) of the Customs Regulations (19 CFR 10.66(a)(1), 10.67(a)(1)), which require the filing of a certificate of exportation on Customs Form 4467, must be amended to provide for the use of Customs Form 3311.

Accordingly, sections 10.66(a)(1) and 10.67(a)(1) of the Customs Regulations (19 CFR 10.66(a)(1), 10.67(a)(1)) are amended to read as follows:

§ 10.66 Articles exported for temporary exhibition and returned; procedure on entry.

(a) * * *

(1) A certificate of exportation on Customs Form 3311;

* * * * * * *

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) * * *

(1) A certificate of exportation on Customs Form 3311;

* * * * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

Because this amendment merely conforms the Customs Regulations with certain administrative changes, notice and public procedure

thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall be effective upon publication in the Federal Register.

(ADM-9-03)

VERNON D. ACREE,
Commisioner of Customs.

Approved September 12, 1974:
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register September 20, 1974 (39 FR 33794)]

(T.D. 74-243)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 17, 1974.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
American President Lines, Ltd., 311 Calif. St., San Francisco, Calif.; Seaboard Surety Co. D 3/29/74	Feb. 2, 1961	Mar. 15, 1961	New York Seaport; $10,000
Birdsall, Inc. Riviera Beach, Fla.; Commercial Union Ins. Co. D 7/1/74	July 1, 1973	July 3, 1973	Miami, Fla.; $50,000
Borinquen Lines, Inc., P.O. Box 5185, San Juan, P.R.; Travelers Indemnity Co.	Mar. 13, 1974	Apr. 9, 1974	San Juan, P.R.; $25,000
Colony Steamship Co., Inc., 40 Broad St., Boston, Mass.; Peerless Ins. Co.	Apr. 11, 1974	Apr. 23, 1974	Boston, Mass.; $10,000
Cryogenics Management Corp., 247 Wescott Dr. Rahway, N.J.; Peerless Ins. Co. D 3/20/74	Mar. 14, 1973	Mar. 15, 1973	New York Seaport; $10,000
The DeLaval Separator Co., 350 Dutchess Turnpike, Poughkeepsie, N.Y.; St. Paul Fire and Marine Ins. Co. D 3/18/74	Jan. 25, 1971	Feb. 16, 1971	Ogdensburg, N.Y.; $10,000
Del Monte Corp., 215 Fremont St., San Francisco, Calif.; Peerless Ins. Co.	Apr. 1, 1974	Apr. 24, 1974	Buffalo, N.Y.; $10,000
E. I. Du Pont de Nemours & Co., 1007 Market St., Wilmington, Del.; Seaboard Surety Co. (PB 2/28/63) D 4/2/74 [1]	Dec. 21, 1973	Apr. 2, 1974	New York Seaport; $10,000
East Coast Agencies, Inc., Miami, Fla.; U. S. Fidelity and Guaranty Corp.	Apr. 12, 1974	Apr. 9, 1974	Miami, Fla.; $10,000
The Hipage Co., Inc., Citizens Office Bldg.; Norfolk, Va.; St. Paul Fire and Marine Ins. Co. D 6/6/74	May 5, 1972	May 11, 1972	Norfolk, Va.; $10,000
I.M.I. Associates Inc., Madison Ave., New York, N.Y.; Peerless Ins. Co. D 6/4/74	Mar. 9, 1972	Mar. 9, 1972	New York Seaport; $10,000
Kern Distributing Co., 305 Manchester Ave., N. Haledon, N.J.; St. Paul Fire and Marine Ins. Co. D 5/2/74	Mar. 22, 1966	Mar. 23, 1966	New York Seaport; $10,000
International Great Lakes Shipping Co., 3140 Book Bldg., Detroit, Mich.; The Home Indemnity Co. D 5/15/74	May 24, 1972	June 12, 1972	Detroit, Mich.; $10,000
Leader International Industries, 1035 E. Hancock Ave., Detroit, Mich.; St. Paul Fire and Marine Ins. Co. D 5/15/74	Nov. 16, 1973	Nov. 20, 1973	Detroit, Mich.; $10,000
Mitsui (USA) Inc., 200 Park Ave., New York, N.Y.; Peerless Ins. Co.	May 3, 1974	May 6, 1974	New York Seaport; $10,000
James M. McCunn and Co., Inc., 230 Park Ave., New York, N.Y.; St. Paul Fire and Marine Ins. Co. D 2/28/74	Oct. 27, 1965	Oct. 29, 1965	Philadelphia, Pa.; $10,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Motorships of Puerto Rico, Inc., 63 Fortaleza St., San Juan, P.R.; St. Paul Fire and Marine Ins. Co.	June 13, 1974	June 18, 1974	New York Seaport; $10,000
Nichmen Co., Inc., 1185 Ave. of the Americas, New York, N.Y.; St. Paul Fire and Marine Ins. Co.	June 24, 1974	June 21, 1974	New York Seaport: $10,000
Rossi Distributing Co., 155 Barneveld Ave., San Francisco, Calif.; Peerless Ins. Co.	Apr. 5, 1974	Apr. 11, 1974	San Francisco, Calif.; $10,000
Schenkers International Forwarders, Inc., 147-29 182nd St., Jamaica, N.Y.; Peerless Ins. Co.	June 12, 1974	June 12, 1974	New York Seaport; $10,000
Southeastern Maritime Corp., 311 E. Bay St., Savannah, Ga.; Sentry Indemnity Co. (PB 5/22/72) D 5/1/74 [2]	Apr. 11, 1974	May 1, 1974	Miami, Fla.; $10,000
South Atlantic Steamship Agency, Inc., PO Box 13085, Port Everglades, Fla.; The Home Indemnity Co. D 4/1/74	Mar. 1, 1973	Apr. 12, 1973	Miami, Fla.; $10,000
Sussex Import Co. Ltd., 291 Utah Ave., S. San Francisco, Calif.; Federal Ins. Co. D 7/1/74	Aug. 25, 1970	Nov. 17, 1970	San Francisco, Calif.; $10,000
Trans Ocean Leasing Corp., 114 Sansome St., San Francisco, Calif.; Sentry Ins., a Mutual Co.	Apr. 30, 1974	June 14, 1974	San Francisco, Calif.; $10,000
United Brands Co., 2800 Prudential Center, Boston, Mass.; Fireman's Ins. Co. of Newark, N.J. (PB 7/19/71) D 7/5/74 [3]	July 5, 1974	July 12, 1974	Boston, Mass.; $10,000
Uniroyal Inc., A. N.J. Corp., Middlebury, Conn.; Federal Ins. Co.	Apr. 15, 1974	Apr. 26, 1974	New York Seaport; $10,000
United Costa Corp., 301 S. Livingston Ave., Livingston, N.J.; Peerless Ins. Co.	May 6, 1974	May 20, 1974	New York Seaport; $10,000
Wits, Inc., 27167 Wick Rd., Taylor, Mich.; St. Paul Fire and Marine Ins. Co.	May 14, 1974	May 28, 1974	Detroit, Mich.; $10,000
WTC International, Inc., 1 World Trade Center, New York, N.Y.; Federal Ins. Co. D 5/14/74	May 15, 1973	May 15, 1973	New York Seaport; $10,000
Wisdom Beverage, 23532 Belle Porte Ave., Harbor City, Calif.; St. Paul Fire and Marine Ins. Co.	Mar. 19, 1974	Mar. 28, 1974	Los Angeles, Calif.; $10,000

[1] Surety is Federal Insurance Co.
[2] Surety is United States Fidelity & Guaranty Co.
[3] Surety is Federal Insurance Co.

J. P. TEBEAU,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(BON-3-10)

(T.D. 74-244)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., September 9, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR Part 159, Subpart C).

Hong Kong dollar:	
August 19–23, 1974	$0.1970
August 26, 1974	.1970
August 27, 1974	.1975
August 28, 1974	.1970
August 29, 1974	.1970
August 30, 1974	.1970
Iran rial:	
August 19–23, 1974	$0.0149
August 26–30, 1974	.0149
Philippines peso:	
August 19, 1974	$0.1505
August 20, 1974	.1505
August 21, 1974	.1505
August 22, 1974	.1505
August 23, 1974	.1482
August 26, 1974	.1485
August 27, 1974	.1500
August 28, 1974	.1500
August 29, 1974	.1480
August 30, 1974	.1495

Singapore dollar:	
August 19, 1974	$0.4035
August 20, 1974	.4025
August 21, 1974	.4035
August 22, 1974	.4035
August 23, 1974	.4030
August 26, 1974	.4035
August 27, 1974	.4040
August 28, 1974	.4030
August 29, 1974	.4030
August 30, 1974	.4030
Thailand baht (tical):	
August 19–23, 1974	$0.0495
August 26, 1974	.0495
August 27, 1974	.0495
August 28, 1974	.0495
August 29, 1974	.0495
August 30, 1974	.0490

(LIQ-3-O:D:T)

R. N. MARRA,
Director,
Duty Assessment Division.

Decisions of the United States Customs Court

Review Decision

(A.R.D. 321)

UNITED STATES *v.* GEIGY CHEMICAL CORPORATION
SANDOZ, INC.
CIBA CHEMICAL & DYE CO.

Chemicals

UNITED STATES VALUE—USUAL PROFIT AND GENERAL EXPENSES

The trial court properly predicated the deduction for the usual profit and general expenses under section 402(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(c)(1)), on the experi-

ence of the importer who had the largest share of the market, rather than on the experience of an importer who had the smallest share of the market.

TRANSACTIONS BETWEEN RELATED PERSONS—SECTION 402(g)

The appraiser misapplied section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), in disregarding the profits and general expenses of the importers, where his action was predicated solely upon the importers' relationship to their Swiss suppliers.

TRANSACTIONS BETWEEN RELATED PERSONS—USUAL PROFIT AND GENERAL EXPENSES

Section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), does not authorize the appraiser to disregard transactions involving related persons unless, *in addition* to the existence of a relationship, the amount representing an element of value does not reflect the usual market experience. Thus, Congress did not intend that the *usual* profit and general expenses deductible from the United States selling price pursuant to section 402(c)(1) (19 U.S.C. § 1401a(c)(1)) be disregarded because a transaction was between related persons.

TRANSACTIONS BETWEEN RELATED PERSONS—TRANSACTIONS DISREGARDED NOT LIMITED TO THOSE "IN THE MARKET UNDER CONSIDERATION"

It is a fundamental fact that rigged prices in the export market may materially affect the importer's profits and general expenses in the United States market. Hence, when United States value is the basis for appraisement, section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), authorizes appraising officers to scrutinize export transactions between importers and their related supplier companies, and to disregard the importer's profit and general expenses as the proper allowances under section 402(c)(1) (19 U.S.C. § 1401a(c)(1)), where the amounts thereof do not fairly reflect the usual amounts of those elements in sales in the United States. Therefore, the "transactions" which may be disregarded under section 402(g) are not limited to those "in the market under consideration", as held by the trial court.

SAME

Although the "market under consideration" in section 402(g)(1) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a (g)(1)), is the United States market when considering United States value (see *Brown, Alcantar & Brown, Inc., et al.* v. *United States*, 69 Cust. Ct. 249, A.R.D. 306, 348 F. Supp. 723 (1972)), such phrase refers to the immediate antecedent term in the statute, "sales", and not to the more remotely antecedent term, "transaction". Consequently, respecting section 402(c)(1), the phrase "in the market under consideration" directed the appraiser's attention to profit and general expenses realized in *sales* in the United States market; but the phrase did not limit the *transactions* that could be disregarded to merely those in the United States market.

SAME

Where United States value is the basis for appraisement section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a (g)), embraces transactions between related persons in the United States market, *and additionally* includes transactions between related exporters and importers. The latter transactions may be disregarded (under appropriate circumstances) even though the elements of value to be considered, profit and general expenses, are realized in sales in the United States market.

SAME

Irrespective of section 402(g) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(g)), appraising officers have *inherent authority*, indeed a *duty*, to consider the circumstances in *all* transactions between related persons and to disregard *any* transaction which is not a valid basis for determination of dutiable value.

SAME

While the appraiser had plenary authority to disregard export transactions between the importers and their Swiss suppliers, if he found the export prices were rigged, manipulated, or contrived to affect the United States value of the merchandise, the record fails to show that he in fact disregarded any such export transactions.

APPLICATION FOR REVIEW OF REAPPRAISEMENT DECISION 11775

Reappraisement Nos. R66/10120–8, R65/16280 and R65/20992

Entered at New York, N.Y.
Entry Nos. 863926, 1082619 and 1097215.

Second Division, Appellate Term

[Affirmed.]

(Decided September 4, 1974)

Carla A. Hills, Assistant Attorney General (*Bernard J. Babb*, trial attorney), for the appellant.

Busby Rivkin Sherman Levy and Rehm (*Saul L. Sherman* of counsel) for appellee Geigy Chemical Corporation.

Barnes, Richardson & Colburn (*James S. O'Kelly, Hadley S. King* and *James H. Lundquist* of counsel) for appellee Sandoz, Inc.

George Bronz for appellee Ciba Chemical & Dye Co.

Before FORD and NEWMAN, Judges;
RAO, J., not participating

NEWMAN, Judge: Appellant (defendant below) has filed an application for review of the decision and judgment of Watson, J. in *Geigy Chemical Corporation et al* v. *United States*, 70 Cust. Ct. 259, R.D. 11775, 358 F. Supp. 1275 (1973), wherein Judge Watson conducted a joint trial of three appeals for reappraisement, and sustained appellees' (plaintiffs below) claimed values.

The imported merchandise, consisting of certain benzenoid dyestuffs, was exported from Switzerland by J. R. Geigy, S.A., Sandoz, Ltd., and Ciba, Ltd. during 1965, and imported by each of their wholly-owned subsidiaries, appellees herein. The parties agree that the proper basis for appraisement is United States value, as defined in section 402(c) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (19 U.S.C. § 1401a(c)). The only elements of the appraised value in dispute are the statutory allowances for profit and general expenses pursuant to section 402(c)(1).[1] At the trial, appellees successfully claimed that the proper allowance for profit and general expenses should be 33.4% rather than 19.1%, which latter figure entered into the Government's appraisement.

We affirm.

The Record

An extensive stipulation of the parties is fully set forth in the opinion of the trial court (70 Cust. Ct. at pages 261–266) to which reference will be made herein. It suffices to state at this juncture that we are in complete accord with the trial court's analysis of the facts.

Decision of The Trial Court

Judge Watson held that the appraiser erroneously applied section 402(g)[2] in disregarding the profit and general expenses of appellees, the three largest importers of the merchandise under consideration,

[1] Section 402(c)(1) provides:

"(c) United States Value.—For the purposes of this section, the United States value of imported merchandise shall be the price at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

(1) any commission usually paid or agreed to be paid, or the addition for profit and general expenses usually made, in connection with sales in such market of imported merchandise of the same class or kind as the merchandise undergoing appraisement;"

[2] Section 402(g) provides:

"(1) For the purposes of subsection (c)(1) or (d), as the case may be, a transaction directly or indirectly between persons specified in any one of the subdivisions in paragraph (2) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then, for the purposes of subsection (d), the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subdivisions in paragraph (2).

"(2) The persons referred to in paragraph (1) are:

* * * * * * *

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; * * *"

and in regarding the profit and general expenses of the smallest importer (Carbic) as those "usually made, in connection with sales * * * of imported merchandise of the same class or kind as the merchandise undergoing appraisement."

The trial judge noted that in 1964 appellees and Carbic possessed 100% of the United States market; and that appellees possessed the "lion's share" of the market (92.4%), with Geigy having the highest percentage of dollar volume of sales (37.8%), as evidenced by paragraph 9 of the stipulation, showing the following figures:

Importer	Percentage of dollar sales
Geigy	37.8%
Sandoz	31.4%
Ciba	23.2%
Carbic	7.6%

With reference to the foregoing figures, Judge Watson aptly commented (70 Cust. Ct. at page 269):

> * * * In light of this division of the market, it would defy common sense to consider the experience of Carbic as that which is "usual" for the market in question. Nor will I discredit the experience of the firms with the larger shares of the market in the absence of specific discrediting evidence.

Further, Judge Watson held that there was no presumption that the experience of Geigy was tainted by any improper manipulations and contrivance between it and its parent company, and he noted that appellant had adduced no proof of any untoward circumstances in the sales between the importers and their parent company suppliers. On the other hand, uncontradicted affidavits submitted by appellees from the parent company suppliers, showed that the profits of appellees' suppliers exceeded the profit of the supplier of Carbic, the company whose general expenses and profit in the United States were adopted by the appraiser.

Thus, the following table shows the percentages of profit of Sandoz, Ltd.; Ciba, Ltd.; and J. R. Geigy, S.A., suppliers to the three appellees, as against the profits of Durand & Huguenin, S.A., supplier to Carbic:

Sandoz, Ltd.	37.6%
Ciba, Ltd.	25.7%
J. R. Geigy, S.A.	23.4%
Durand & Huguenin, S.A.	12.3%

As a basis for selecting Geigy's gross profit of 33.4% as the proper statutory allowance for profit and general expenses,[3] the trial judge held that what is usual in a market for purposes of section 402(c) is the experience of the largest segment of the market, or in that portion of the market which sells the greatest quantity of the merchandise in question. (Citing *United States* v. *International Expediters, Inc., for Winsor & Newton, Inc.*, 40 CCPA 148, C.A.D. 511 (1953); and *United States* v. *C. J. Tower & Sons of Buffalo, Inc.*, 60 CCPA 46, C.A.D. 1079, 470 F. 2d 1393 (1972). Hence, since Geigy possessed a large share of the market than any other firm (see table *supra* at page 6), the general expenses and profit of Geigy represented the amounts of those elements which were "usual" in the market under consideration for purposes of computing the proper allowances under section 402(c)(1).

Contentions of the Parties

Appellant contends that the proper allowance for general expenses and profit under section 402(c)(1) should be based upon the general expenses and profit of Carbic, a firm not related to its exporter. Consequently, urges appellant, the trial judge committed reversible error in predicating the statutory allowances upon the general expenses and profit of appellee Geigy, who was related to its exporter.

Appellant further argues that section 402(g) is applicable, notwithstanding that the relationship under section 402(g)(2) was between appellees and their parent companies in Switzerland. Hence, appellant insists that the appraiser properly disregarded the general expenses and profits of the appellees reflected in their sales in the United States, and adopted the general expenses and profit of Carbic as the proper allowances under section 402(c)(1).

Appellees contend that Geigy's profit and general expenses (33.4%), not Carbic's (19.1%), were "usual", and therefore should have been allowed by the appraiser; and that the appraiser erred in disregarding the experience of appellees solely because they were related to their Swiss suppliers.

Opinion

After considering the parties' arguments, we have no hesitancy in reaching the determination that we are in accord with the opinion of the trial judge, excepting certain observations with respect to section 402(g), upon which we wish to comment.

[3] According to paragraph 8 of the stipulation, "gross profit" is the sum of net profit and general expenses. In 1964, Sandoz' gross profit was 29.9%, and Ciba's gross profit was 26.6%.

The trial court held that section 402(g) was inapplicable in this case because: (1) the transactions in the United States between appellees and their customers were between unrelated companies, and thus not between persons specified in any of the subdivisions of section 402(g)(2); (2) the transactions between appellees and their parent companies were not transactions "in the market under consideration", since such market in the instance of United States value is the United States domestic market; and (3) even if there were a relationship between appellees and their purchasers in the United States, such relationship alone would not be sufficient to disregard transactions between them pursuant to section 402(g) in the absence of a further finding that the general expenses and profit realized in sales by appellees in the United States did not fairly reflect the amount usually reflected in sales of merchandise of the same class or kind as the involved merchandise.

We have concluded that the trial court correctly held that the appraiser misapplied section 402(g) in disregarding the profits and general expenses of appellees since his action was predicated solely upon appellees' relationship to their Swiss suppliers.[4] Clearly, section 402(g) does not authorize disregarding of transactions involving related persons unless, *in addition* to the existence of a relationship, the amount representing an element of value does not reflect the usual market experience. Put otherwise, Congress did not intend in section 402(g) that the *usual* profit and general expenses be rejected because a transaction was between related persons. Yet, this would be the result in this case if appellant's position were upheld.

However, we are unable to agree with the trial court's holding that where the basis of appraisement is United States value a transaction must be "in the market under consideration" (viz., United States market) to be disregarded under section 402(g). In substance, the trial court held that the relationship of appellees to their parent company suppliers was of no significance; and that since appellees were unrelated to their purchasers in the United States, section 402(g) was inap-

[4] The parties stipulated as follows:

"11. In making the allowance for profit and general expenses specified in paragraph 4(b) above, the Appraiser, because the relationship between Geigy, Sandoz and Ciba, and their respective parent companies was such as is described in Section 402(g)(1), found that their profits and general expenses did not "fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement," disregarded their profits and general expenses for purposes of determining the proper allowances to be made under Section 402(c)(1), and based his allowance on the profits and general expenses of Carbic. Having found for the aforesaid reasons that the profits and general expenses of Geigy, Sandoz, and Ciba did not fairly reflect the amount usually reflected in the market under consideration of merchandise of the same class or kind as the merchandise undergoing appraisement, the Appraiser did not determine the accuracy of the submissions by Geigy, Sandoz, and Ciba with regard to general expenses and profit".

plicable. We believe this construction of the statute is too narrow, and entirely disregards the fundamental fact that rigged prices in the export market may materially affect the importer's profits and general expenses in the United States market. See *National Carloading Corporation* v. *United States*, 65 Cust. Ct. 830, 834, A.R.D. 280, 319 F. Supp. 1291 (1970), *aff'd on other grounds*, 60 CCPA 54, C.A.D. 1080, 469 F. 2d 1398 (1972); *Judson Sheldon International Corporation* v. *United States*, 54 Cust. Ct. 773, 780, A.R.D. 183 (1965).

Thus, when United States value is the basis for appraisement, as here, we are of the view that section 402(g) authorizes appraising officers to scrutinize export transactions between importers and their related supplier companies, and to disregard an importer's profit and general expenses as the proper allowances under section 402(c)(1) where the amounts thereof do not fairly reflect the usual amounts of those elements in sales in the United States.[5] Otherwise, "a foreign manufacturer or seller who is related to the importer [could obtain] a low appraisement by making all or most of his profit on the imported goods in the United States rather than a normal profit in export sales". *National Carloading Corporation*, 65 Cust. Ct. at page 835.

Although we agree with the trial court that the "market under consideration" in section 402(g)(1) is the United States market when considering the United States value (see *Brown, Alcantar & Brown, Inc., et al.* v. *United States*, 69 Cust. Ct. 249, A.R.D. 306, 348 F. Supp. 723 (1972), such phrase refers to the immediately antecedent term in the statute, "sales", and not to the more remotely antecedent term, "transaction". Therefore, concerning section 402(c)(1), the phrase "in the market under consideration" directed the appraiser's attention to profits and general expenses realized in *sales* in the United States market; but clearly the phrase did not limit the *transactions* that could be disregarded to merely those in the United States market. Accordingly, where United States value is the basis for appraisement, section 402(g) embraces transactions between related persons in the United States market, *and additionally* includes transactions between related exporters and importers. The latter transactions may be disregarded (under appropriate circumstances) even though the elements of value to be considered, viz., profit and general expenses, are realized in sales in the United States market.

While we conclude that the appraiser had plenary authority to disregard export transactions between appellees and their Swiss suppliers, if he found that the export prices were rigged, manipulated, or con-

---

[5] Moreover, irrespective of section 402(g) we believe that appraising officers have *inherent authority*, indeed a *duty*, to consider the circumstances in *all* transactions between related persons and to disregard *any* transaction which is not a valid basis for determination of dutiable value.

trived to affect the United States value of the merchandise, the record fails to show the appraiser, in fact, disregarded any such export transactions. Rather, paragraph 11 of the stipulation indicates that nothing more than the relationship of the importers to their Swiss suppliers was considered by the appraiser in rejecting appellees' profits and general expenses. As noted above, under section 402(g) relationship alone did not warrant the appraiser's rejection of appellees' profits and general expenses.

We agree that the presumption of correctness attaching to the appraised values has been decisively overcome by the record. Further, we find that the trial court properly predicated the statutory deduction for the usual profit and general expenses under section 402(c)(1) on the experience of appellee Geigy, who had the largest share of the market, rather than on the experience of Carbic, who had the smallest share of the market.

In conclusion, we find no reversible error in the decision and judgment of the trial judge, and affirm. The numbered findings of fact and conclusions of law in the opinion of the trial judge are hereby adopted as our own.

Judgment will be entered accordingly.

The court wishes to commend counsel for the respective parties in this proceeding for their excellent briefs and oral arguments, which have been most helpful to us in considering the issues presented.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *September 9, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE.
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/649	Boe, C.J. September 5, 1974	Amco Custom Brokerage Co. et al.	73-2-00362, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Philadelphia Plastic bags in various sizes, having wide openings and handles with no closure on top
P74/650	Boe, C.J. September 5, 1974	Amity Fabrics, Inc.	64/21452-S	Par. 904 17½%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4030)	New York Waterproof cotton cloth ("Meteor" or "Vellutina")
P74/651	Boe, C.J. September 5, 1974	Dan Dee Imports, Inc.	72-4-00923	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic articles
P74/652	Boe, C.J. September 5, 1974	Gimbel Brothers, Inc.	72-2-00456	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/653	Boe, C.J. September 5, 1974	S. S. Kresge Co. et al.	72-5-01098, etc.	Item 706.60 20%	Item 774.60 11.5% or 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Longview (Portland, Oreg.) Shopping bags
P74/654	Boe, C.J. September 5, 1974	S. S. Kresge Company	73-6-01432	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Savannah Shopping bags
P74/655	Boe, C.J. September 5, 1974	Dora May Company, Inc.	71-11-01837, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags

Judgment of the United States Customs Court in Appealed Case

SEPTEMBER 5, 1974

APPEAL 5525.—United States *v.* John V. Carr & Son, Inc.—CONTAINERS AND ASSORTED FISH HOOKS—FISH HOOKS, OTHER—AMERICAN GOODS RETURNED—TSUS.—C.D. 4377 affirmed May 16, 1974. C.A.D. 1118.

Tariff Commission Notice

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *September 17, 1974.*

The appended notice relating to investigations by the United States Tariff Commission is published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[AA1921–142]

TAPERED ROLLER BEARINGS FROM JAPAN

Notice of investigation and hearing

Having received advice from the Treasury Department on September 4, 1974, that tapered roller bearings from Japan are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on September 11, 1974, instituted investigation No. AA1921–142 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10:00 a.m., EDT, on Tuesday, October 22, 1974. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon Friday, October 18, 1974.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued September 11, 1974.

Index

U.S. Customs Service

Customs Court

Tariff Commission Notice

UNITED STATES
GOVERNMENT PRINTING OFFICE
PUBLIC DOCUMENTS DEPARTMENT
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375

CB UNIVE300UD R I
UNIVERSITY MICROFILMS
J REED SUPVR PERIODICALS
300 N ZEEB RD
ANN ARBOR MI 48106

U.S. GOVERNMENT PRINTING OFFICE: 1974